

No. 11729.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

WESTERN AIR LINES, INC.,

Appellant,

vs.

LABOR COMMISSIONER OF THE DIVISION OF LABOR LAW
ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELA-
TIONS OF THE STATE OF CALIFORNIA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdiction.

This is an appeal from an Amended Order of Compliance [Tr. pp. 34-35] issued by the District Court of the United States for the Southern District of California, Central Division, to enforce a Judgment Confirming Award [Tr. p. 13] made and entered by it on November 21, 1946 pursuant to the following provisions of the Railway Labor Act, 45 U. S. Code, Section 159:

"Sec. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as

to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties."

Statement of Case.

On May 10, 1946 the Appellant and its employees, including Appellee's assignors, entered into an arbitration agreement [Tr. pp. 18-26, incl.] pursuant to the provisions of the Railway Labor Act, 45 U. S. Code, Sections 151-188. Section *Eleventh* of the agreement provided that the award of the Board of Arbitration shall become effective as of January 1, 1946 [Tr. p. 20]. The matters submitted to the Board by the arbitration agreement related, 1, to wages; 2, to working conditions [Tr. p. 4].

On July 26, 1946 the Board duly filed its Award with the Clerk of the District Court [Tr. pp. 2-12, incl.], and on November 21, 1946 a Judgment Confirming Award was made and entered by the District Court [Tr. p. 13].

The Appellant having failed and refused to pay to assignors of Appellee the wage increases granted by the Award [Tr. pp. 15-17, incl.], the Appellee herein petitioned the District Court on June 9, 1947 for an order directing the Appellant to comply with the Award [Tr. pp. 14-25, incl.]. After hearing and considering both

oral arguments and written objections by the Appellant, the Court below rendered its Amended Order of Compliance [Tr. pp. 34-35, incl.] from which this appeal was taken.

There is no dispute between the parties as to the facts involved, namely: that assignors of Appellee were employees of the Appellant at the time the matter as to wages and working conditions was submitted to arbitration; that their employment terminated prior to the filing of the Award; and that the sum of \$562.21 is the correct amount of the difference between the wages paid the said employees and the wages granted by the Award, which sum the District Court ordered Appellant to pay.

Questions Presented.

The main questions raised by the Appellant in opposing the proceeding in the Court below and on this appeal concern the right of Appellee's assignors to the wages granted by the Arbitration Award and the power of the District Court to order the Appellant to comply with the said Award by paying the wages granted therein.

Summary of Argument.

A. The assignors of Appellee are entitled to the wages granted by the Arbitration Award.

B. The District Court had the power to order the Appellant to pay the wages granted by the Award.

ARGUMENT.

A. The Assignors of Appellee Are Entitled to the Wages Granted by the Arbitration Award.

The assignors of Appellee were parties to the arbitration agreement [Tr. p. 18] and are therefore entitled to the benefits of the Award. The fact that the Award was filed on July 26, 1946 after the termination of the employment relationship between the said assignors and the Appellant does not determine its effective date where the arbitration agreement between the parties specifically sets forth the effective date as follows:

“Eleventh: The award of the Board shall become effective as of January 1, 1946 and as to schedule ‘B’, appended hereto, shall remain in effect for one (1) year and thereafter subject to thirty (30) days notice under provisions of Section 6, Title I, of the Railway Labor Act, as Amended. As to schedule ‘A,’ appended hereto, the award of the Board shall become effective January 1, 1946 and remain in effect for sixty (60) days from the date of such award and subject to change thereafter under provisions of Section 6, Title I, of the Railway Labor Act, as Amended.” [Tr. p. 20.]

It clearly appears from the aforesaid provision of the arbitration agreement that the wages granted by the Award were to be effective as of January 1, 1946. Furthermore, nothing contained in the Award or the arbitration agreement requires that Appellee’s assignors be in the employ of the Appellant on the date that the Award is filed to entitle them to its benefits. Appellant in main-

taining that contention is in effect asking the Court to write a condition into the Award or arbitration agreement which was never intended by the parties.

It is a general rule that an award will be given a liberal construction and everything will be intended in its favor as far as possible. Any ambiguity in the words of an award should be settled in the way which will best coincide with the apparent intention of the arbitrators, and the Court, by intendment, will restrain general terms in an award to apply to particular words in the submission as to connect the particular thing awarded with the general words of the submission.

3 Am. Jur. 950, 951;

6 C. J. S. 238.

B. The District Court Had the Power to Order the Appellant to Pay the Wages Granted by the Award.

The Court in ordering Appellant to pay the wages granted by the Award was simply exercising its inherent power to enforce the judgment made and entered by it on November 21, 1946 [Tr. p. 13]. As a general rule, a party recovering judgment has the right to proceed to enforce it, and the Court rendering judgment has inherent power to enforce it and to make such orders and issue such process as may be necessary to render it effective.

49 C. J. S. 1071;

Security Trust & Savings Bank v. Southern Pacific Railroad Co., 6 Cal. App. (2d) 585, 589, 45 P. (2d) 268, 270.

There is no merit to Appellant's contention that the Order of Compliance rendered by the Court was beyond the scope of the Award or the matters submitted by the arbitration agreement. The arbitration agreement clearly submitted the matter of wages for decision [Tr. p. 19, paragraph Fourth; Tr. p. 22, Appendix A, "Wages."] and the Award obviously related to wages [Tr. p. 4]. It follows, therefore, that the Order of Compliance directing Appellant to pay the wages granted by the Award, in a sum which the Appellant admits it has failed to pay Appellee's assignors, squarely falls within the scope and purview of the submission and Award.

Appellant further contends that Appellee is estopped from obtaining relief in the District Court since it failed first to refer the matter for a ruling from the Arbitration Board pursuant to Section 8(m) of the Railway Labor Act (45 U. S. Code, Section 158) and the agreement to arbitrate [Tr. p. 20, paragraph Fifteenth]. The fallaciousness of the foregoing contention is readily apparent when it is borne in mind that Appellee is not seeking a modification or clarification of the Award, which might require a ruling of the Board, but is merely seeking to enforce it. It is the Appellant which is attempting to change the terms or conditions of the Award by asking the Court to exclude the Appellee's assignors from its benefits. This, Appellee submits, Appellant cannot do in any event since the Award has become final by judgment.

Conclusion.

Under the provisions of Section 9, paragraph Second of the Railway Labor Act (45 U. S. Code, Section 159) the Award is conclusive on the parties as to the merits and facts of the controversy submitted to arbitration unless within ten days after the filing of the Award a petition to impeach the Award is filed. The Award in the instant case was filed on July 26, 1946 and no petition for its impeachment was ever made. Neither was an appeal taken from the Judgment confirming Award [Tr. p. 13] which judgment is also final and conclusive on the parties. Appellant cannot now attack the Award and Judgment Confirming Award in this proceeding to enforce it. It is, therefore, urged that the Amended Order of Compliance of the District Court be affirmed.

Respectfully submitted,

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